FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

(1) **CRIMINAL APPLICATION NO.2147 OF 2006**

Rupesh Eknath Pavshe ..Applicant
V/s.
State of Maharashtra ..Respondent

(2) **CRIMINAL APPLICATION NO.2166 OF 2006**

Ramesh Dinkar Gaikwad ..Applicant
V/s.
State of Maharashtra ..Respondent

(3) **CRIMINAL APPLICATION NO.1817 OF 2006**

Kishor Balkrishna Mhatre ..Applicant
V/s.
State of Maharashtra ..Respondent

Mr.N.N.Gawankar with Mr.Arfan Sait for the applicants.

Mr.R.D.Suryawanshi for the original Complainant.

Ms.S.V.Gajare APP for the State.

Coram : R.S.Mohite,J

Date : 15.6.2006.

1. Since all these criminal applications have been filed by the persons who are shown as accused in C.R.No.I-122/2005 registered by Vithalwadi police station, all are being disposed of by this common order.

2. It is the case of the prosecution that the deceased Balaram Mhatre who is the father of the Complainant Ravi Mhatre had a dispute relating to land of one Balkrishna and in this regard civil proceedings is

pending in the Court at Kalyan. On 18.11.2005 at about 10.00 A.M. a survey was going on on the said land. At that time the applicant in Criminal application no.1817 of 2006 Kishor Mhatre was present there alongwith one boy. He made a phone call on his mobile and suddenly within 15 minutes a TATA Sumo came there from which several persons armed with dangerous weapons like sword, sticks and iron rod alighted. These persons used their dangerous weapons to assault Balaram and his family members. As a result of this assault Balaram expired and 7 family members were injured. I have seen the post mortem notes of Balaram. He has been inflicted severe injuries which are 14 in number. There are grevious injuries in the nature of incised wound upon 2 of the relatives and other 5 have also suffered several injuries.

3. It was sought to be argued that amongst the 3 applicants before the Court today, in the FIR only Kishor and Ramesh were named. Rupesh was not named at all. It is however, seen that there are statements of as many as 10 eye witnesses and amongst them witnesses Tukaram Mhatre and Ramesh Mhatre involved all these applicants stating the weapons with which they were armed. It was sought to be argued that as far as present applicants are concerned, the role attributed to them is not assaulting the deceased but assaulting the relatives. However, after seen the grave incised wounds caused to the relatives, it is the case which

may fall under Section 307 of IPC which is serious offence punishable with life imprisonment. The applicant Kishor was said to be armed with iron rod. The injuries are such which can be caused by iron rod or stick and choppers said to have been carried by the applicants and others. My attention was drawn to the fact that one of the accused Vijay Bhoir was granted bail by this Court in Criminal Application No.1461/2006. It appears that he was granted bail on the footing that there was no overact alleged against him. This is not the situation against the present applicants and that can be inferred from the statements of Tukaram and Ramesh. Ramesh was unconscious for almost six days. He has given the statement after he regained consciousness. Prima facie it appears that the entire episode was pre-planned. In my view, not a fit case to grant bail to the applicants viz. Ramesh Gaikwad in Application No.2166/2006 and Kishor Mhatre in application no.1817/2006. Hence application of bail of these applicants are rejected.

4. As far as the applicant Rupesh Eknath Pavshe in application no.2147/2006 is concerned, in my view at the highest, there is a general allegation of assault by all the accused. The benefit of parity can be given only to Rupesh Pavshe whose name does not appear in the FIR and who is said to have been armed with a stick. It appears that his name only appeared on the 2nd statement which was recorded by the police on

26.11.2005. In the circumstances, Criminal application no.1817/2006 and Criminal application no.2166/2006 are rejected. The applicant Rupesh Eknath Pavashe in Criminal application no.2147/2006 is granted benefit of parity and therefore, it is directed that pending his trial in pursuance of C.R.No.I-122/2005 registered by Vithalwadi police station, he may be released on bail in the sum of Rs.20,000/- with one surety in the like amount subject to the condition that he shall not enter Thane district during the pendency of his trial except on the dates when his presence is required for the purpose of trial. The applicant Rupesh Pavshe shall also give his new residential address to the Superintendent of Jail before his release and he shall report to the nearest police station from his new address twice in a month on the 1st and 3rd Mondays.

5. It is made clear that the observations made in this order will not be used at the time of the trial. All the applications are disposed of accordingly.

(R.S.Mohite,J)